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**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR PART 1710**

**RIN 0572-AC32**

**Rural Determination and Financing Percentage**

**AGENCY: Rural Utilities Service, USDA.**

**ACTION: Proposed rule.**

**SUMMARY:** The Rural Utilities Service (RUS or Agency) is proposing policies and procedures for determining rural eligibility for all loans and loan guarantee financial assistance. In addition, policies and procedures are proposed for determining the percentage of total project costs the Agency will finance where the project supplies electricity to an electric utility serving an area that is less than 100 percent rural. By codifying these policies and procedures the agency will provide needed flexibility in the methods utilized to determine eligibility and percentage of financing.

**DATES:** Written comments must be received by RUS no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:**

Submit comments by either of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Postal Mail/Commercial Delivery: Please send your comments addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, SW, STOP 1522, Room 5162, Washington, DC 20250-1522.

Other Information: Additional information about Rural Development and its programs is available on the Internet at <http://www.rurdev.usda.gov/index.html>.

**FOR FURTHER INFORMATION CONTACT:** Lou Riggs, USDA-Rural Utilities Service, 1400 Independence Avenue, SW, Stop 1569, Washington, DC 20250-1569, telephone (202) 690-0551 or email to [lou.riggs@wdc.usda.gov](mailto:lou.riggs@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

### **Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been formally reviewed by the Office of Management and Budget. This regulation expands the scope of RUS's lending authority to promote renewable energy and support smaller projects that do not qualify under current regulations. Due to the expanded scope of the program, RUS is working with the Office of Management and Budget on a program review to better understand the implications of these changes.

### **Catalog of Federal Domestic Assistance**

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. The Catalog is available on the Internet and the General Services Administration's (GSA) free CFDA website at <http://www.cfda.gov>.

### **Executive Order 12372**

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

### **Information Collection and Recordkeeping Requirements**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methods and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms or information technology.

Comments may be sent to Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Stop 1522, Room 5162 South Building, Washington, DC 20250.

**Title:** Rural Determination and Financing Percentage.

**Type of Request:** New information collection.

**Abstract:** The Agency manages loan and loan guarantee programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 et seq., as amended (RE Act), which authorizes RUS to make loans to entities that furnish and improve electric service to persons in rural areas. The proposed rulemaking sets forth approaches to be used by the Agency in determining a Rural Percentage for areas served by electric utilities. That percentage could range from 0 to 100 percent. The proposed rulemaking will also set forth approaches by the Agency for determining what percentage of a project is eligible for RUS financing if the Rural Percentage of an electric utility's entire service area is less than 100 percent. These approaches will apply to all loan and loan guarantee funding requests.

The information collected will consist of information necessary to document the basis for estimating the Rural Percentage and the required loan application materials.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 14.3 hours per response.

**Respondents:** Nonprofit organizations, business or other for profit.

**Estimated Number of Respondents:** 10

**Estimated Number of Responses per Respondent:** 21.6

**Estimated Annual Responses:** 216

**Estimated Total Annual Burden on Respondents:** 3,088 hours

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, SW, STOP 1522, Room 5162, Washington, DC 20250-1522. Telephone: 202 690-1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

#### **National Environmental Policy Act Certification**

The Agency has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

#### **Regulatory Flexibility Act Certification**

The Regulatory Flexibility Act is not applicable to this rule since the RUS is not required by 5 U.S.C. 551 et seq. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### **Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or for

the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards in §3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effort will be given to this rule, and, in accordance with §212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any, must be exhausted before any action against the Department or its agencies may be initiated.

#### **Executive Order 13132, Federalism**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

#### **Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175 imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that this final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which Rural Development is not aware and would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

### **E-Government Act Compliance**

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

### **Background**

RUS proposes to amend 7 CFR part 1710 by adding two new sections 1710.116 and 1710.117 respectively entitled "Rural Determination" and "Financing Percentage." The Rural Electrification Act of 1936, as amended ("RE Act") authorizes the Agency to make loans to entities that furnish and improve electric service to persons in rural areas.

Traditional borrowers have been non-profit rural electric cooperatives that have used



federal funds to finance the construction and improvement of electric projects in rural areas, including generation, transmission and distribution projects.

For purposes of this discussion, “June 2008 rural area” refers to the geographic area served by borrowers that had an outstanding RUS loan as of June 18, 2008 (such borrowers hereinafter referred to as “existing borrowers”). Rural electric cooperatives, public utility districts, tribal utility authorities, municipalities and other eligible organizations that were existing borrowers as of June 18, 2008, and which have not since experienced any growth in their service areas via acquisition or merger are 100 percent rural per the definition of rural area referenced in the RE Act as amended by the 2008 Farm Bill (P.L. 110-246). It is the borrower’s June 2008 rural area that is grandfathered and not a borrower that had an outstanding RUS loan as of June 18, 2008 (defined in the proposed rule as “June 2008 Borrower.”). To the extent these borrowers have acquired additional territory by acquisition or merger since June 18, 2008, the additional area will be separately reviewed to determine whether it is rural. The current definition of rural area for purposes of the RE Act provides that an area other than a city, town, or unincorporated area that has a population greater than 20,000 is defined as rural.

As the Agency investigates financing options for projects owned by entities other than the existing borrowers it has become clear that there is a need for flexibility in the methods utilized by the Agency to accommodate projects selling to or owned by electric systems that serve areas that are partially rural and partially urban in character. The Agency proposes to codify the methods by which the agency makes a determination of

whether a proposed investment can be financed, and if so, what percentage of the asset(s) can be financed, by amending 7 CFR part 1710.

The properties of electricity are such that once a project is interconnected to a grid that serves both rural and urban areas, there is no practical way to direct a given project's output to only rural persons. Many persons who live in rural America are served by "hybrid" electric utilities that serve both rural and urban area consumers. The Agency proposes a balanced approach that respects the constraints within our existing authority under the RE Act and makes RUS financing available to borrowers that furnish and improve electric service to persons in rural areas that are consumers of a hybrid utility.

In all cases where a service territory is to be supplied with electricity by a RUS-financed project, the Agency proposes that the applicable utility estimate the percentage of its load that is consumed by persons or entities in a rural area ("Rural Percentage"). The options for how this Rural Percentage is to be arrived at require that the data need to be readily obtainable by the utility and sufficiently detailed to allow for verification by an independent third party. In all cases the options utilize actual population or a proxy for population (described in the next section) in order to be consistent with the definition of rural area used in the RE Act. RUS proposes to retain the ultimate authority for determining the applicable Rural Percentage.

It has been the Agency's practice to finance only that percentage of a project cost that equates to the Rural Percentage. This practice has been a workable approach when large

projects have been shared by RUS borrowers who were considered 100 percent rural and other utilities where the balance of costs can be readily financed by another utility that is a non-RUS borrower. This approach is neither feasible for smaller projects nor responsive to the needs of the market in other situations. The Agency's inability to fund 100 percent of the financing needs of a given project has undermined the Agency's effort to be responsive to the renewable energy project market in particular, but is also relevant where applications are submitted by entities for other purposes. When the typical outside applicant must find a lender to fill the gap that results if the Agency does not fund 100 percent of the debt, applicants often cannot readily justify the extra time and expense associated with bringing in additional lenders into the project. Negotiating case-by-case security documentation and participation agreements is overly expensive and time consuming for the applicant and the Agency does not have the staff or resources to meet a need for this activity in any great volume. This is particularly true for smaller projects.

Promulgating the policies set forth in this proposed regulation has the potential of creating jobs and stimulating the economy, primarily from entities outside the traditional borrower community.

The proposed rule provides that it will be the applicant's responsibility to work with the utility to develop a report that estimates the utility's Rural Percentage. The information needed to make this estimate is often proprietary or sensitive, but RUS or a third party acceptable to RUS must be able to verify it. RUS retains the ultimate responsibility for making the determination.

## **Rural Percentage**

As stated earlier, the area served by borrowers with an outstanding loan as of June 18, 2008, is considered to be 100 percent rural. If previous borrowers reapply to the program, borrowers with June 2008 rural area territory apply after acquiring new service territory or new applicants apply for financing, it is proposed that they have the option to use any one of four methods to estimate the Rural Percentage for the applicable service area. The first three methods look at the overall area or service territory served by the utility. The fourth method involves looking at the load flows in rural areas (a) immediately surrounding a proposed plant site in a rural area or (b) adjacent to or nearby a proposed plant site not in a rural area. It is proposed that the Rural Percentage will be reassessed with each loan request.

**Method R1** This method may be used when the meter locations are known, and, in most cases, the utility will have the data available in shape files utilized by geographic information software (“GIS data”). GIS data are used to overlay meter locations onto population maps available from the United States Census Bureau (Census Bureau) to determine how many meters are located in rural areas and how many are located in urban areas. The Rural Percentage under this method is calculated as rural meters divided by total meters.

**Method R2** This method is similar to Method R1 but it also takes load into account as a proxy for population. Load can be either energy sold measured in megawatt hours

(MWh) or coincident peak demand as measured in megawatts (MW), as measured within the service area during the most recently completed calendar year. As with Method R1, GIS data allow the utility to determine which meters are rural and which are urban, but the Rural Percentage under this method is calculated as rural load divided by total load.

**Method R3** This method is to be used only when the service area is known, but the exact locations of meters are not known. The area is identified on a map with landmarks such as highways, rivers, cities, etc. The website for the Census Bureau is used to identify areas within the service area with a population of greater than 20,000 as well as the total population for the service area. The Rural Percentage is calculated using an estimated total population and known urban population using population and housing data from the Census Bureau as well as information from other sources acceptable to RUS and may incorporate reasonable assumptions when all facts are not available. The Rural Percentage using this method shall be equal to the fraction that results from dividing the rural population by the total population.

**Method R4** This method looks at load flows in and around the actual location of a proposed generating plant. A boundary, or polygon, is determined which coincides with the area beyond which power from the proposed plant does not flow during low consumer demand conditions. Low consumer demand in this case is when power from the outside must be imported to meet the total demand in this geographic area. This boundary is consistent with the presumption that all of the power generated from the plant is consumed within this area during low consumer demand conditions. This method

should only be used for projects serving loads that are approximately 50 MW or less located in rural areas.

Under the fourth method above, once the polygon area is established, any one of the first three methods may be used to determine the Rural Percentage for the polygon. This fourth method would be typically used for generation projects that are located in a rural area; it would be allowed for projects located in an urban area only where a benefit can be clearly demonstrated for a rural area. For example, a project located in the southern end of the Delmarva Peninsula might be located in a census place greater than 20,000, but it would benefit the greater rural area of the peninsula to the north of it by reducing congestion at constrained delivery points. It is proposed that projects not meeting this exception for an urban location must be located at least 10 miles from an urban center.

### **Financing Percentage**

As discussed above, RUS has historically determined the Rural Percentage for a new borrower or an applicant seeking to return for financing after buying out of the program, and then only financed eligible project costs up to that percentage.

It is important that RUS be able to finance up to 100 percent of an applicant's request in order to be responsive to the needs of the market, but the Agency also needs to respect the rural constraint imposed by the RE Act.

Under the proposed rulemaking, the financing percentage is the percentage of total project costs RUS may finance ("Financing Percentage"). The rulemaking proposes that

the Agency can finance up to 100 percent of the debt requirements for projects in a hybrid rural/urban service territory up to but not exceeding a cap on total RUS financing available for the service area (the “Rural Cap”). The Rural Cap is cumulative in nature and once established may be periodically reassessed to account for load growth and population shifts within the territory. Once the Rural Cap has been reached, a hybrid utility would not be eligible for additional financing from the Agency.

The Rural Cap calculation applies only to a hybrid rural/urban service territory served by a for-profit entity or nonprofit entity that had no outstanding RUS loan as of June 18, 2008. As proposed, the Rural Cap applies to any eligible generation facility, including but not limited to renewable and gas-fired generation where the gas generation is specifically intended to firm up an identified renewable resource. Section 4 of the RE Act provides for a preference to cooperatives and nonprofit entities, but does not prohibit RUS from making loans to for-profit entities. The proposed rulemaking represents a balance of three primary factors: (1) the constraint that Agency financing apply to persons in rural areas, (2) the preference for nonprofit entities and (3) the recognition that the demand for renewable energy financing is greatest where utilities are subject to a renewable energy portfolio and for-profit developers are in a position to use the tax incentives legislated for renewable energy. Accordingly, it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative capacity financed by RUS that serves a for-profit utility service area reaches the lesser of the Rural Percentage, the state’s renewable portfolio standard (RPS) or a default percentage (20 percent) established by RUS for this purpose for states that do not

have an RPS. This more restrictive formulation of the Rural Cap as applied to for-profit utility service areas is in recognition of the preference found in the RE Act for nonprofit entities. Agency lending to for-profit entities is not prohibited under the RE Act, but nonprofit entities enjoy a preference in this authorizing legislation.

The following methods recognize the differing practicalities presented by whether the applicant is seeking to finance generation, transmission, distribution or energy efficiency projects:

### **Financing Percentage for Generation**

The following three options are proposed for determining the Financing Percentage for generation projects and related transmission where the applicant was not an existing borrower on June 18, 2008. These options facilitate the ability of RUS to finance up to 100 percent of a given project, but recognize that in mixed rural/urban service territories a cap on the cumulative level of lending by RUS is necessary to be consistent with the rural eligibility limitation imposed by the RE Act.

**Method G1** Multiply the Rural Percentage by the coincident peak demand recorded for the utility system during the most recently completed calendar year. The result of this calculation is a Rural Cap measured in MW. In the case of a nonprofit utility it is proposed that RUS may provide 100 percent of the debt for a given energy asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches this Rural Cap. In the case of a for-profit utility it is proposed that RUS may provide 100 percent



of the debt for a given energy asset or fleet of assets until the cumulative capacity financed by RUS reaches the lesser of this Rural Cap, the state's RPS target, or 20 percent of the utility's coincident peak, as measured in MW.

**Method G2** Multiply the Rural Percentage times the total energy sold in the system as measured during the most recently completed calendar year. This calculation would result in a Rural Cap measured in energy hours. In the case of a nonprofit utility it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative energy financed by RUS reaches this Rural Cap. In the case of a for-profit utility it is proposed that RUS may provide up to 100 percent of the debt for a given energy asset or fleet of assets until the cumulative energy financed by RUS reaches the lesser of this Rural Cap, the state's RPS target or 20 percent, as measured in MWh.

**Method G3** Multiply the Rural Percentage times the total project cost for a specific asset. This would result in a maximum financing cap measured in dollars for each asset. It is proposed that RUS provide financing for no more than this amount of debt; the balance of the costs would come from either equity or additional lenders or a combination of both. (This method is the approach currently used by the Agency in determining the Financing Percentage.)

### **Financing Percentage for Distribution**

The following two options for determining the Financing Percentage are proposed to be available for distribution projects where the applicant is not an existing borrower as of June 18, 2008. No differentiation between nonprofit and for-profit utilities is proposed for determining the Financing Percentage for distribution projects.

**Method D1** The Financing Percentage is proposed to be equal to the Rural Percentage as determined by Methods R1, R2, or R3 above. All projects in the system may be financed up to this percentage regardless of physical location.

**Method D2** The Financing Percentage is proposed to be 100 percent of the costs of the projects located in rural areas; the Financing Percentage would be zero for projects located in urban areas.

### **Financing Percentage for Energy Efficiency Projects**

The following single financing option is being proposed for energy efficiency projects since the location of each project will be known and the rural/urban determination can be easily determined:

**Method EE1** The Financing Percentage is proposed to be 100 percent of the costs of the projects located in rural areas; the Financing Percentage would be zero for projects located in urban areas.

## **Financing Percentage for Transmission**

“Stand-alone” transmission investment is more complicated than generation or distribution projects in any assessment of the extent to which a transmission facility serves persons in rural areas, particularly regional transmission and inter-regional transmission. As noted above, the properties of electricity are such that once a project is interconnected to a grid that serves both urban and rural areas, there is no practical way to direct a given project’s output to only persons in rural areas. The proposed rule provides that the Financing Percentage for transmission projects will be determined by considering only the Rural Percentage of the electric utility systems that have assumed responsibility for the repayment of the loan(s) provided by RUS for the transmission project (“Sponsoring Utilities”). A Sponsoring Utility may be either an owner or an offtaker or both. If the Sponsoring Utility is an owner but not obligated under an offtake agreement, the owner system must demonstrate physical benefit to their system, not merely financial gain associated with their ownership of the line.

In multi sponsor transmission cases, RUS expects that the Financing Percentage that is arrived at will be less than 100 percent. The size of a multi sponsored transmission project is typically large and would typically involve multiple lenders and investors; as such, the cost and time constraints associated with involving participating lenders are relatively less burdensome and the need for 100 percent RUS financing is not a prerequisite for the Agency to be responsive to this large scale transmission market.

The following two options for determining the Financing Percentage for transmission projects recognize that there may be significant complications in trying to assess load flows or simple GIS data to arrive at the Rural Percentage using the actual location or load flow impact of the transmission asset:

**Method T1** The rulemaking proposes a Financing Percentage of 100 percent for a transmission investment only in the following cases: a transmission project wholly owned by an existing utility system borrower(s), 100 percent of a fractional interest owned by an existing borrower, or 100 percent of the lines needed to meet the investment requirements imposed on an existing borrower as a member of an integrated transmission system.

**Method T2** For other than existing borrowers, it is proposed that RUS will finance a percentage of the applicant(s) financial commitment to a transmission investment equal to the Rural Percentage using methods R1, R2 or R3 above. The applicant must be a Sponsoring Utility for determining the Rural Percentage.

As presently proposed, there is no overall cap on the amount of RUS financing that can be borrowed by a hybrid system rural/urban utility for multiple transmission investments. Comments are specifically requested on this issue.

The permutations and combinations for possible ownership and capital structures for all projects are potentially infinite. The proposed rulemaking reserves to RUS the ultimate discretion in how the proposed parameters are to be applied.

Finally, this proposed rulemaking also includes other minor changes intended to modernize the loan application process and accommodate generation projects that use renewable fuel that are proposed to meet an RPS imposed by the applicable jurisdictional authority. RUS proposes that RPS related generation projects using renewable fuel need not be demonstrated to be a least cost option and the requirement that the applicants solicit proposals from alternative providers for such projects is deemed to be met for such projects. Also, RUS proposes that smart grid facilities be expressly identified in the construction work plans submitted to the Agency for approval.

#### **List of Subjects in 7 CFR Part 1710**

Electric power, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Rural Utilities Service proposes to amend 7 CFR part 1710, as follows:

#### **PART 1710 – GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES**

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 1921 et seq., 6941 et seq.

## **Subpart A - General**

2. Amend § 1710.2 by adding definitions for “June 2008 Borrower,” “Sponsoring Utility,” and “Utility” in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) \* \* \*

\* \* \* \* \*

June 2008 Borrower means a borrower that had an outstanding loan as of June 18, 2008 made under titles I through V of the RE Act.

\* \* \* \* \*

Sponsoring Utility means a Utility that assumes responsibility for the repayment of the loan(s) provided by RUS for a transmission project. The Sponsoring Utility may be either an owner or an offtaker or both. If the Sponsoring Utility is an owner but not obligated under an offtake agreement, the owner system must demonstrate physical benefit to their system, not merely financial gain associated with their ownership of the line.

\* \* \* \* \*

Utility means an entity in the business of providing retail electric service to Consumers (distribution entity) or an entity in the business of providing wholesale electric supply to distribution entities (generation entity) or an entity in the business of providing transmission service to distribution or generation entities (transmission entity), where, in each case, the entities provide the applicable service using self-owned or controlled assets under a published tariff that the entity and any associated regulatory agency may adjust.

\* \* \* \* \*

### **Subpart C – Loan Purposes and Basic Policies**

3. Amend § 1710.101 by revising paragraph (f) to read as follows:

§ 1710.101 Types of eligible borrowers.

\* \* \* \* \*

(f) Except as provided in paragraph (g) of this section, former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loads accruing from the time the former borrower's complete loan application is received by RUS.

\* \* \* \* \*

4. Amend § 1710.104 by revising paragraph (b) to read as follows:

§ 1710.104 Service to non-RE Act beneficiaries.

\* \* \* \* \*

(b) Loan funds may be approved for facilities that serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purpose of the loan; or

(3) The requirements of §§ 1710.116 and 1710.117 of this subpart are satisfied.

5. Add § 1710.116 to read as follows:

§ 1710.116 Rural Determination.

(a) General. This section shall be used to determine the rural eligibility for all applicants.

Borrowers serving, directly or indirectly, any person located within a rural area, shall be considered eligible for financing as provided in this section and § 1710.117.

(b) Rural Cap. Rural Cap means the aggregate amount of generation in megawatt hours (MWh) that RUS will finance for a given Utility. The amount may be measured in terms of either installed capacity or annual energy sales.

(c) Rural Percentage. Except as provided in paragraph (d) of this section, the percentage of rural persons served relative to the total population in the service territory of a Utility shall be considered to be the Rural Percentage. RUS retains the ultimate authority for determining the Rural Percentage and the Rural Percentage shall be re-evaluated with each loan request.

(d) June 2008 Borrowers. The Rural Percentage for June 2008 Borrowers that have not acquired any new service territory since June 18, 2008 shall be 100 percent.

(e) Report and supporting documentation. It is the Borrower's responsibility to work with the applicable Utility to estimate the Rural Percentage and provide RUS with a report acceptable to RUS estimating the Rural Percentage. The report and supporting documentation must be verifiable by RUS or a third party acceptable to RUS.

(f) Methods for calculating the Rural Percentage. The borrower may use any one of the following four methods to estimate the Rural Percentage, except as otherwise noted.

(1) Method R1 Identify all meters currently located within the service territory for the applicable Utility excluding sale for resale meters. Determine the rural meters and total meters using data on meter locations in the format utilized by geographic information



software (GIS) and using data available from the Census Bureau. The Rural Percentage shall be equal to the fraction that results from dividing the number of rural meters by the number of total meters.

(2) Method R2 Identify all meters located within the service territory for the applicable Utility excluding sale for resale meters. Determine the rural meters and total meters for the area using data available from the Census Bureau. Determine the rural, and total MWh sold during the previous calendar year. The Rural Percentage shall be equal to the fraction that results from dividing the number of rural MWh by the total MWh sold. Borrowers may use peak demand (megawatts) in place of MWh sales to calculate the rural fraction.

(3) Method R3 Identify the geographic area of the service territory for the applicable Utility using landmarks such as highways, rivers or boundaries of political jurisdictions. Determine the urban and total population for the area using data available from the U.S. Bureau of the Census (Census Bureau). Additional data from other sources acceptable from RUS may also be used to refine the result arrived at using Census Bureau data. The Rural Percentage shall be equal to the fraction that results from dividing the rural population by the total population. This method is only to be used if GIS data on meter locations is not available.

(4) Method R4

(i) This method may only be used for small generation projects that serve loads approximately 50 megawatts (MW) or less and are located in a rural area, at least 10 miles from an urban center, or for small generation projects that are located in an urban

area where a benefit can be clearly demonstrated for a rural area such as a project that results in relief of congestion at a constrained delivery point that feeds a rural area.

(ii) Perform a load flow study in and around a proposed generation plant site. Identify a boundary which coincides with the geographic area beyond which power from the proposed plant does not flow during low consumer demand conditions. Use either Methods R1, R2 or R3 to determine the Rural Percentage for the identified area.

6. Redesignate § 1710.117 as §1710.118, and add a new §1710.117 to read as follows:

§ 1710.117 Financing Percentage.

(a) General. This section shall be used to determine the eligible percentage of financing for projects included in loan applications submitted to RUS.

(b) Financing Percentage. Projects serving persons in rural areas shall be eligible for financing from RUS for up to 100 percent of eligible costs or such other lower percentage as provided in this section unless otherwise reduced pursuant to either an equity or other underwriting requirement determined by RUS, including but not limited to a requirement that other lenders participate in the financing. The percentage of total project costs determined to be eligible for RUS financing shall be the Financing Percentage.

(c) June 2008 Borrowers. The Financing Percentage for June 2008 Borrowers shall be 100 percent limited only by an underwriting requirement as may be determined by RUS pursuant to paragraph (b) of this section.

(d) Generation. The following three options may be used for determining the maximum Financing Percentage for generation projects. Applicants must provide RUS

with estimates and support documentation for the option selected by the applicant. The percentage of generation capacity or energy financed in all or part by RUS for utility systems other than June 2008 Borrowers may not exceed the applicable Rural Cap.

(1) Method G1. Multiply the Rural Percentage times the coincident peak demand recorded for the applicable Utility service area as measured during the most recently completed calendar year. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches the Rural Cap for a nonprofit utility system. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative nameplate capacity financed by RUS reaches the lesser of the Rural Cap, the applicable state renewable portfolio standard or 20 percent of the coincident peak as measured in megawatts for a for-profit utility system.

(2) Method G2. Multiply the Rural Percentage times the total energy sold within the system for the most recently completed calendar year. The result is a Rural Cap measured in energy hours. RUS may provide up to 100 percent of the debt for a given generation asset or fleet of assets until the cumulative capacity financed by RUS reaches the Rural Cap for a nonprofit utility system. RUS may provide 100 percent of the debt for a given generation asset or fleet of assets until the cumulative capacity financed by RUS reaches the lesser of the Rural Cap, the applicable state renewable portfolio standard or 20 percent as measured in energy hours for a for-profit utility system.

(3) Method G3. Multiply the Rural Percentage times the total project cost for a specific asset. This establishes the maximum financing cap measured in dollars for each asset. RUS may provide financing for no more than this amount of the debt.

(e) Transmission. Transmission that is dedicated to interconnecting a specific generation facility shall be considered incidental to and part of that project for purposes of determining the related Financing Percentage and as such be calculated pursuant to paragraph (d) of this section. The following two options may be used for determining the maximum Financing Percentage for stand-alone bulk or other interconnecting transmission lines. Applicants must provide RUS with estimates and support documentation for the option selected by the applicant.

(1) Method T1 June 2008 Borrowers may seek financing for 100 percent for a transmission investment only in the following cases: a transmission project wholly owned by existing borrower(s), 100 percent of a fractional interest owned by an existing borrower, or 100 percent of the lines needed to meet the investment requirements imposed on an existing borrower as a member of an integrated transmission system.

(2) Method T2 In cases where the applicant is not a June 2008 Borrower, RUS will finance a percentage of the applicant(s) financial commitment to a transmission investment equal to the Rural Percentage using methods R1, R2 or R3 of paragraph (f) in § 1710.116. The applicant must be a Sponsoring Utility for determining the Rural Percentage.

(f) Distribution. Applicant must provide RUS with estimates and support documentation for one of the following two options for determining the maximum Financing Percentage for distribution projects.

(1) Method D1 The Financing Percentage is equal to the Rural Percentage as determined by Methods R1, R2, or R3 described in paragraph (f) of § 1710.116. All projects in the system may be financed up to this percentage regardless of physical location.

(2) Method D2 The Financing Percentage may be up to 100 percent of the costs of the projects located in rural areas; the Financing Percentage would be zero for projects located in urban areas.

(g) Financing Percentage for Energy Efficiency Projects. Applicants must provide RUS with estimates and support documentation for determining the maximum Financing Percentage using the following method for energy efficiency projects:

Method EE1 The Financing Percentage may be up to 100 percent of the costs of the projects located in rural areas; the Financing Percentage shall be zero for projects located in urban areas.

7. Amend §1710.119 by revising paragraph (b) to read as follows:

§ 1710.119 Loan processing priorities.

\* \* \* \* \*

(b) The Administrator may give priority to processing loans that are required to meet the following criteria:

- (1) To restore electric service following a major storm or other catastrophe;
- (2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed;
- (3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the

merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154);

(4) To correct serious safety problems, other than those resulting from borrower mismanagement or negligence;

(5) To finance generation facilities that use renewable fuel; or

(6) To build transmission facilities in order to deliver the energy produced by generating facilities that use renewable fuel.

\* \* \* \* \*

#### Subpart D – Basic Requirements for Loan Approval

**8.** Amend §1710.151 by revising paragraph (e) to read as follows:

§1710. 151 Required finding for all loans.

\* \* \* \* \*

(e) Facilities for nonrural areas. Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric projects for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries (see § 1710.104) or the requirements of §§ 1710.116 and 1710.117 are satisfied.

\* \* \* \* \*

#### Subpart F – Construction Work Plans and Related Studies

**9.** Amend §1710.251 by revising paragraphs (c)(8) through (c)(10) to read as follows:

§ 1710.251 Construction work plans – distribution borrowers

\* \* \* \* \*

(c) \* \* \*

- (8) Headquarters facilities;
- (9) Improvements, replacements, and retirements of generation facilities;
- (10) Smart grid facilities including communications equipment, smart meters, load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment. Load management equipment and other smart devices eligible for financing, including the related costs of installation, is limited to capital equipment designed to influence the time and manner of consumer use of electricity, which includes peak clipping and load shifting. To be eligible for financing, such equipment must be owned by the borrower, although it may be located inside or outside a consumer's premises; and

\* \* \* \* \*

**10.** Amend § 1710.252 by revising paragraphs (c) (2) and (c)(4) to read as follows:

§ 1710.252 Construction work plans – power supply borrowers.

\* \* \* \* \*

(c) \* \* \*

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and smart grid facilities such as Systems Control and Data Acquisition equipment, including automated dispatching, communications and sectionalizing equipment, and load management equipment;

\* \* \* \* \*

(4) Improvements and replacements of generation facilities, including generation facilities that use renewable fuel; and

\* \* \* \* \*

## **Subpart F – Construction Work Plan and Related Studies**

§ 1710.253 [Amended]

**11.** Amend § 1710.253 as follows:

- a. Revise paragraph (c)(1) and redesignate paragraphs (c)(2) through (c)(9) as (c)(3) through (c)(10), respectively, and add a new paragraph (c)(2); and
- b. Redesignate paragraph (d) as paragraph (e) and add a new paragraph (d);

§ 1710.253 Engineering and cost studies – addition of generation capacity.

\* \* \* \* \*

(c) \* \* \*

(1) Capital;

(2) Operation and maintenance costs;

\* \* \* \* \*

(d) The requirements of paragraphs (c)(4), (c)(5), and (c)(6) of this section shall not apply in the case of generation projects using renewable fuel that are proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority.



**12.** Amend § 1710.254 by adding paragraph (a)(1)(iii) and revising paragraphs (g) and (h) to read as follows:

§ 1710.254 Alternative sources of power.

(a) \* \* \*

(1) \* \* \*

(iii) Where a generation project using renewable fuel is proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority.

\* \* \* \* \*

(g) The requirements of this section supplement the RUS requirements for financing of generation and bulk transmission facilities as set forth elsewhere in this part.

(h) At the request of a borrower, RUS, in its sole discretion may waive specific requirements of paragraphs (b) through (e) of this section if such waiver is required to prevent unreasonable delays in obtaining generation capacity that could result in system reliability problems, or, in the case of renewable projects proposed to meet a renewable portfolio standard imposed by the applicable jurisdictional authority, the requirements of this section shall be deemed to be met.

Date: May 30, 2013

John Padalino  
Acting Administrator  
Rural Utilities Service

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